



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

Paper No. 8

**MAIL**

James A. LaBarre  
BURNS, DOANE, SWECKER & MATHIS, L.L.P.  
P.O. Box 1404  
Alexandria, VA 22313-1404

APR 02 2003

DIRECTOR OFFICE  
TECHNOLOGY CENTER 2100

In re Application of: Ngo et al. )  
Application No. 10/059,233 )  
Attorney Docket No. 033311-006 ) **DECISION ON PETITION TO**  
Filed: January 31, 2002 ) **MAKE SPECIAL UNDER 37 C.F.R.**  
For: DATA REPLICATION BASED UPON ) **§1.102 and M.P.E.P. §708.02(VIII)**  
A NON-DESTRUCTIVE DATA )  
MODEL )

This decision is in response to the communication filed February 20, 2003, which is being treated under 37 CFR §1.102(d), requesting to make special of the above-identified application in view of M.P.E.P. §708.02(VIII): Accelerated Examination.

The petition is **DISMISSED**.

M.P.E.P. §708.02, Section VIII, which sets out the prerequisites for a grantable petition for Accelerated Examination under 37 C.F.R. §1.102(d), states in relevant part:

A new application (one which has not received any examination by the examiner) may be granted special status provided that applicant (and this term includes applicant's attorney or agent) complies with each of the following items:

- (A) Submits a petition to make special accompanied by the fee set forth in 37 CFR 1.17(h);
- (B) Presents all claims directed to a single invention, or if the Office determines that all the claims presented are not obviously directed to a single invention, will make an election without traverse as a prerequisite to the grant of special status.
- (C) Submits a statement(s) that a pre-examination search was made, listing the field of search by class and subclass, publication, Chemical Abstracts, foreign patents, etc. A search made by a foreign patent office satisfies this requirement;
- (D) Submits one copy each of the references deemed most closely related to the subject matter encompassed by the claims if said references are not already of record; and

(E) Submits a detailed discussion of the references, which discussion points out, with the particularity required by 37 CFR 1.111(b) and (c), how the claimed subject matter is patentable over the references.

Petitioners' submission is deficient in that (1) there is no statement that will make an election *without traverse* as a prerequisite to the grant of special status required by section (B), (2) there is no statement that indicates an online search was conducted on USPTO database and/or there is no class and subclass have been identified, (3) the detailed discussion of the US patent references merely reproduces the titles or Abstracts provided in each reference accompanied by a statement that the particular group of references do not include features of the claimed invention. The discussion does not point out *how* the claimed subject matter is patentable over the references with the particularity required by 37 C.F.R. 1.111(b) and (c) as required by section (E) noted above. Noticed that, references deemed "most closely related" to the subject matter encompassed by the claims are required to be identified and discussed. Furthermore, (4) not all discussed references have been provided with one copy each as required by section (D), for example, a copy of the commercial product Lotus Notes discussed in Appendix B (page B-5) has not been provided and/or made of record.

Courtesy call and contact with attorney of record has been made on March 14, 2003, which deficiencies have been identified and/or informed, so that the filed deficient Petition could be perfected timely. Another courtesy call has been made on March 21, 2003.

Accordingly, the Petition is DISMISSED. The application file is being forwarded to the Technology Central Files to await examination in its proper turn based on its effective filing date.

Any request for reconsideration must be filed within two months of the mailing date of this decision.



Vincent N. Trans  
Special Programs Examiner  
Technology Center 2100  
Computer Architecture, Software, and Information Security  
(703) 305-9750

TQD